

April 22, 2014

Katherine Ross
4840 Evanwood Drive
Shingle Springs CA 95682

Re: Your Request for Advice
Our File No. A-14-061

Dear Ms. Ross:

This letter responds to your request for advice regarding the revolving door provisions of the Political Reform Act (the “Act”).¹ We base this letter on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Do the post-governmental employment provisions apply to you as you plan to leave Covered California and enter the private sector?

CONCLUSION

No. Because your position with Covered California was not (and should not have been) a designated position and your job duties are considered as “clerical, secretarial, or ministerial” under the Act, the post-governmental provisions do not apply.

FACTS

You are in the process of leaving your current position at Covered California as an Assistant Governmental Program Analyst in the Plan Management Division. In that position, you supported implementation and offerings of health and dental plans on the Health Benefit Exchange. You also supported the dental plan solicitation evaluation for plan year 2014 with duties such as: reading plan responses to the Exchange Solicitation, organizing solicitation

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

responses to prepare your supervisors for negotiations, analyzing and summarizing outside consultant report findings for leadership, preparing board materials containing summaries and outlining next steps, participating in advisory group discussions specific to 2015 dental policy.

You have accepted a new position with Delta Dental, a dental insurance provider who offers plans through Covered California. Your position with Delta Dental will be a Public Exchange Account Manager. There is no indication in the job description for this position that you will be in direct contact with Covered California.

ANALYSIS

Post-Governmental Employment Restrictions

Public officials who have left government service are subject to two types of post-governmental restrictions under the Act. The first restriction is the “permanent ban” prohibiting a former state employee from “switching sides” and participating, for compensation, in any specific proceeding involving the State of California if the proceeding is one in which the former state employee participated while employed by the state. (Sections 87401-87402, Regulation 18741.1.) The second restriction is the “one-year ban” prohibiting certain state employees from communicating, for compensation, with his or her former agency for the purpose of influencing certain administrative or legislative action. (Section 87406, Regulation 18746.1.)

The Permanent Ban on “Switching Sides”

Sections 87401 and 87402 prohibit former state administrative officials, who participated in a judicial, quasi-judicial or other proceeding while employed by a state agency, from being paid to represent or assist in representing another person regarding that same proceeding. Section 87401 specifically provides:

“No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

“(a) The State of California is a party or has a direct and substantial interest.

“(b) The proceeding is one in which the former state administrative official participated.”

(Section 87401.)

By the terms of these sections, the permanent ban applies to former state administrative officials. Section 87400(b) defines a “state administrative official” as a “member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity.” We have reviewed your job description and duties as well as your former employer’s conflict of interest code. Based on this information, your position does not qualify you as engaging in judicial, quasi-judicial, or other proceedings because the responsibilities of an Assistant Governmental Program Analyst are “clerical, secretarial, or ministerial.” You are therefore not subject to the permanent ban.

The One-Year Ban

The second restriction is the “one-year ban” prohibiting a state employee from making any formal or informal appearance or making any oral or written communication, for compensation, with his or her former agency for the purpose of influencing certain administrative or legislative action or influencing certain proceedings. (See Section 87406; Regulation 18746.1.) The one-year ban applies to any employee of a state administrative agency who holds a position that is designated or should be designated in the agency’s conflict-of-interest code. (Section 87406(d)(1); Regulation 18746.1(a)(2).) Your position is not designated in the agency’s code, and there is nothing in your job description that implies it should be designated. For this reason, the one-year ban does not apply to you.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:jgl